Projek Lebuhraya Usahasama Bhd v Zakaria bin Hamid (biological father of the deceased, Azizi bin Zakaria) & Anor and another appeal

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NOS A-04(NCvC)(W)-444–10 OF 2023 AND A-04(NCvC)(W)-447–10 OF 2023

AHMAD ZAIDI IBRAHIM, COLLIN SEQUERAH AND FAIZAH JAMALUDIN JJCA

11 SEPTEMBER 2025

Civil Procedure — Appeal — Apportionment of liability and quantum of damages — Sessions court found highway concessionaire and its contractor 80% liable for causing biker's midnight death on unlit stretch of highway — Biker was thrown off his machine when it struck unidentified object lying on highway — Whether concessionaire and contractor had failed to take reasonable steps to discharge their common law duty of care to deceased to maintain highway in good repair and condition in accordance with sound engineering practices — Whether failure to keep highway clear of potentially dangerous objects and failure to ensure highway was adequately illuminated at night were breaches of duty of care on part of concessionaire and contractor

Close to midnight on 27 April 2018, Azizi bin Zakaria ('the deceased') was riding his motorcycle in a convoy of bikers along the North-South Highway when at a pitch-dark stretch at KM117.8 his machine struck an unidentified object lying on the road, sending him flying through the air before landing heavily several metres away. SD2, who was following the deceased, crashed into the latter's fallen motorcycle and was thrown into the emergency lane of the highway. Relatively unhurt, SD2 switched on his cellphone torch to look for the deceased and found him lying motionless in the middle of the highway. The deceased died at the scene, presumably from head injuries. The deceased's parents (the respondents herein) sued the appellants in the sessions court for negligently causing the deceased's death and claimed damages for loss of dependency. The appellants, Projek Lebuhraya Usahasama Bhd ('PLUS') and Projek Penyelenggaraan Lebuhraya Bhd ('PROPEL') were, respectively, the highway concessionaire and its maintenance and repair contractor. The sessions court found the appellants 80% liable and the deceased 20% liable for the accident and death and awarded the respondents RM57,600 for loss of dependency and RM3,000 as special damages. The High Court dismissed the appellants' appeal against the decision and allowed the respondents' cross-appeal to increase the loss of dependency award by adjusting the deceased's monthly contribution figure to RM500 from RM300. The instant

A appeal was against the whole of the High Court's decision.

Held, dismissing the appeals and affirming the High Court's decision:

(1) Neither the sessions court nor the High Court was plainly wrong in their
B respective decisions (see paras 62–63).

(2) Based on the facts and circumstances of this case, PLUS owed the deceased a duty of care at common law to maintain the highway in good repair and condition because: (a) the harm that would befall users of the highway if the appellants failed to discharge that duty of care was
C reasonably foreseeable and (b) the relationship between the highway users and PLUS was proximate (see para 33).

(3) The appellants had not taken reasonable steps to discharge their duty of care to the deceased. The PLUS Ronda patrols on the highway did not
D constitute the taking of all reasonable measures to ensure the safety of highway's users. In the circumstances, a reasonable course of action would have been for PLUS to have installed street lighting at reasonable intervals along the highway in accordance with established engineering practices (see paras 43, 49 & 61).

E (4) PLUS' common law duty of care to highway users to maintain the highway in good repair and condition was non-delegable. Although PLUS had delegated its duty to maintain and repair the highway to PROPEL, it remained liable for any negligence by PROPEL that resulted in damage or injury to highway users. The duty of care could have been
F discharged by taking reasonable steps, eg by having foreign objects/obstructions lying on the highway removed within a reasonable period of time and putting up street lights at reasonable intervals along the highway so that highway users were able to see the presence of any dangerous objects or obstructions on the road at night (see paras 59–60).

G (5) It was settled law that an appellate court would only interfere in matters of quantum if there was a misapprehension of facts or an error in assessment by the judge who had awarded the damages. The appellants did not adduce evidence to counter the testimony of the deceased's father
H (the first respondent) with regard to the amount of the deceased's monthly contribution. The appellants also failed to prove their contention that the deceased did not contribute to his parents but only to his younger siblings (see paras 65 & 69–70).

I (6) The High Court increased the award for loss of dependency not because it thought that the trial court's award was too low but because of a discrepancy between the trial court's open court pronouncement of its decision and what was contained in its grounds of judgment ('GOJ'). The open court pronouncement stated that the loss of dependency was based on a contribution of RM500 per month whereas the GOJ stated

the contribution amounted to be RM300 per month. In the circumstances, there was no reason to interfere with the High Court's decision on this issue (see paras 71–72).

[Bahasa Malaysia summary

Hampir tengah malam pada 27 April 2018, Azizi bin Zakaria ('si mati') sedang menunggang motosikalnya dalam satu konvoi penunggang motosikal di sepanjang Lebuhraya Utara-Selatan apabila di satu jajaran yang gelap gelita pada KM117.8, motosikal beliau telah melanggar suatu objek yang tidak dikenalpasti di atas jalan raya, menyebabkan beliau terpelanting ke udara sebelum terhempas dan terjatuh dengan kuat beberapa meter jauhnya. SD2, yang mengekori si mati, telah terlanggar motosikal si mati yang telah terjatuh dan tercampak ke lorong kecemasan lebuh raya tersebut. Oleh kerana tidak tercedera, SD2 telah menghidupkan lampu suluh telefon bimbitnya untuk mencari si mati dan mendapati si mati terbaring kaku tidak bergerak di tengah lebuh raya. Si mati telah meninggal dunia di tempat kejadian, yang dipercayai berpunca daripada kecederaan di bahagian kepala. Ibu bapa si mati (responden di sini) telah menyaman perayu di mahkamah sesyen atas alasan kecuaian yang menyebabkan kematian si mati dan menuntut ganti rugi bagi kehilangan tanggungan. Perayu, iaitu Projek Lebuhraya Usahasama Bhd ('PLUS") dan Projek Penyelenggaraan Lebuhraya Bhd ('PROPEL'), masing-masing merupakan pemegang konsesi lebuh raya dan kontraktor penyelenggaraan serta pembaikan lebuh raya tersebut. Mahkamah sesyen telah mendapati perayu bertanggungan sebanyak 80% dan si mati bertanggungan sebanyak 20% terhadap kemalangan dan kematian tersebut serta menganugerahkan kepada responden sejumlah RM57,600 bagi kehilangan tanggungan dan RM3,000 sebagai ganti rugi khas. Mahkamah Tinggi telah menolak rayuan perayu terhadap keputusan tersebut dan membenarkan rayuan balas responden untuk menambah amaun award kehilangan tanggungan dengan melaraskan jumlah sumbangan bulanan si mati kepada RM500 daripada RM300. Rayuan semasa adalah terhadap keseluruhan keputusan Mahkamah Tinggi tersebut.

Diputuskan, menolak rayuan dan mengesahkan keputusan Mahkamah Tinggi:

(1) Baik mahkamah mesyen mahupun Mahkamah Tinggi tidak jelas salah dalam keputusan masing-masing (lihat perenggan 62–63).

(2) Berdasarkan fakta dan keadaan kes ini, PLUS mempunyai tugas berhati-hati di bawah common law kepada si mati untuk menyelenggara lebuh raya dalam keadaan baik dan terpelihara kerana: (a) kemudaratan yang akan menimpa pengguna lebuh raya sekiranya perayu gagal melaksanakan tugas berhati-hati tersebut adalah munasabah dijangkakan; dan (b) hubungan antara pengguna lebuh raya dan PLUS adalah cukup rapat (lihat perenggan 33).

(3) Perayu-perayu telah gagal mengambil langkah-langkah yang munasabah untuk melaksanakan tugas berhati-hati mereka terhadap si mati. Rondaan PLUS Ronda di lebuh raya tidak merupakan pengambilan segala langkah munasabah bagi memastikan keselamatan pengguna lebuh raya. Dalam keadaan ini, tindakan yang munasabah ialah PLUS memasang lampu jalan pada jarak yang munasabah di sepanjang lebuh raya selaras dengan amalan kejuruteraan yang ditetapkan (lihat perenggan 43, 49 & 61).

(4) Tugas berhati-hati PLUS di bawah common law terhadap pengguna lebuh raya untuk menyelenggara lebuh raya dalam keadaan baik dan terpelihara adalah tidak boleh diwakilkan. Walaupun PLUS telah mewakilkan kewajipannya untuk menyelenggara dan membaiki lebuh raya kepada PROPEL, PLUS tetap bertanggungan terhadap sebarang kecuaian oleh PROPEL yang mengakibatkan kerosakan atau kecederaan kepada pengguna lebuh raya. Tugas berhati-hati tersebut boleh dilaksanakan dengan mengambil langkah-langkah yang munasabah, sebagai contoh dengan mengalihkan objek asing/halangan yang terletak di atas lebuh raya dalam tempoh masa yang munasabah dan memasang lampu jalan pada jarak yang munasabah di sepanjang lebuh raya supaya pengguna lebuh raya dapat melihat kewujudan sebarang objek atau halangan berbahaya di atas jalan pada waktu malam (lihat perenggan 59–60).

(5) Ia adalah undang-undang yang mantap bahawa mahkamah rayuan hanya akan campur tangan dalam isu kuantum sekiranya terdapat kesalahfahaman terhadap fakta atau kesilapan dalam taksiran oleh hakim yang telah menganugerahkan ganti rugi tersebut. Perayu-perayu tidak mengemukakan keterangan untuk menyangkal keterangan bapa si mati (responden pertama) berhubung jumlah sumbangan bulanan si mati. Perayu-perayu juga gagal membuktikan dakwaan mereka bahawa si mati tidak menyumbang kepada ibu bapanya tetapi hanya kepada adik-beradiknya yang lebih muda (lihat perenggan 65 & 69–70).

(6) Mahkamah Tinggi telah meningkatkan award bagi kehilangan tanggungan bukan kerana ia berpendapat bahawa award mahkamah perbicaraan adalah terlalu rendah, tetapi kerana wujud percanggahan antara pengisytiharan keputusan mahkamah perbicaraan di mahkamah terbuka dan apa yang terkandung dalam alasan penghakimannya ('AP'). Pengisytiharan di mahkamah terbuka menyatakan bahawa kehilangan tanggungan adalah berdasarkan sumbangan sebanyak RM500 sebulan manakala AP menyatakan jumlah sumbangan sebanyak RM300 sebulan. Dalam keadaan tersebut, tiada alasan untuk campur tangan terhadap keputusan Mahkamah Tinggi mengenai isu ini (lihat perenggan 71–72).]

Cases referred to

Ahmad Rashidi bin Yahya & Anor v Projek Lebuhraya Usahasama Bhd [2021] MLJU 1632; [2021] CLJU 1409; [2021] AMEJ 1356, HC (refd)

AJS v JMH and another appeal [2022] 1 MLJ 778; [2022] 1 CLJ 331; [2022] 1 AMR 617, FC (refd)

Arab-Malaysian Finance Bhd v Steven Phoa Cheng Loon & Ors and other appeals [2003] 1 MLJ 567; [2003] 1 CLJ 585, CA (refd)

Burnside & another v Emerson & another [1968] 1 WLR 1490, CA (refd)

Caparo Industries Plc v Dickman and others appellants [1990] 2 AC 605; [1990] UKHL 2, HL (refd)

Dr Kok Choong Seng & Anor v Soo Cheng Lin and another appeal [2018] 1 MLJ 685; [2017] 10 CLJ 529; [2017] 6 AMR 609, FC (refd)

Gan Yook Chin (P) & Anor v Lee Ing Chin @ Lee Teck Seng & Ors [2005] 2 MLJ 1; [2004] 4 CLJ 309; [2004] 6 AMR 781, FC (refd)

Gorringe v Calderdale Metropolitan Borough Council [2004] UKHL 15; [2004] 2 All ER 326, HL (refd)

Hamzah D494 & Ors v Wan Hanafi bin Wan Ali [1975] 1 MLJ 203; [1975] CLJU 54, FC (refd)

Hemraj & Co Sdn Bhd v Tenaga Nasional Bhd [2023] 1 MLJ 785; [2023] 1 CLJ 651; [2023] 1 AMR 725, FC (refd)

Iftikar Ahmed Khan (as the executor of the estate for Sardar Mohd Roshan Khan, deceased) v Perwira Affin Bank Bhd (previously known as Perwira Habib Bank Malaysia Bhd) [2018] 2 MLJ 292; [2018] 1 CLJ 415; [2017] 8 AMR 517, FC (refd)

Latimer v AEC Ltd [1953] 2 All ER 449, HL (refd)

LBS Travel Sdn Bhd dan satu lagi lwn Nathan a/l Muthayah dan lain-lain [2019] 8 MLJ 767; [2019] 2 CLJ 113; [2018] MLRHU 1006, HC (refd)

M'Alister (or Donoghue) (Pauper) v Stevenson [1932] AC 562, HL (refd)

Malaysian Motor Insurance Pool v Tirumeniyar a/l Singara Veloo [2020] 1 MLJ 440; [2019] 10 CLJ 731; [2019] 7 AMR 385, FC (refd)

Ng Hoo Kui & Anor v Wendy Tan Lee Peng (administratrix for the estate of Tan Ewe Kwang, deceased) & Ors [2020] 12 MLJ 67; [2020] 10 CLJ 1; [2020] 8 AMR 227 (refd)

Parimala a/p Muthusamy & Ors v Projek Lebuhraya Utara-Selatan [1997] 5 MLJ 488; [1997] 4 CLJ 54; [1997] 4 AMR 3274, HC (refd)

Project Lebuhraya Utara-Selatan Bhd v HMD Rais A Mohamed Ariff 2010 [MLJU] 2242; [2011] 10 CLJ 679, HC (refd)

Projek Lebuhraya Usahasama Bhd v Abdul Azim John bin Abdullah [2022] MLJU 1181; [2022] CLJU 1168; [2022] AMEJ 0588, HC (not folld)

Samuel Naik Siang Ting v Public Bank Bhd [2015] 6 MLJ 1; [2015] 8 CLJ 944; [2018] 3 AMR 259, FC (refd)

Tan Kuan Yau v Suhindrimani [1985] 2 MLJ 22; [1985] CLJ Rep 323, SC (refd)

Tebin bin Mostapa (as administrator of the estate of Hj Mostapa bin Asan,

deceased) v Hulba-Danyal bin Balia & Anor (as joint administrators of the estate of Balia bin Munir, deceased) [2020] 4 MLJ 721; [2020] 7 CLJ 561; [2020] 5 AMR 579, FC (refd)

Tenaga Nasional Malaysia v Batu Kemas Industri Sdn Bhd and another appeal [2018] 5 MLJ 561; [2018] 6 CLJ 683; [2018] 4 AMR 234, FC (refd)

Tengku Dato' Ibrahim Petra bin Tengku Indra Petra v Petra Perdana Bhd and another appeal [2018] 2 MLJ 177; [2018] 2 CLJ 641; [2018] 1 AMR 517

Tetuan Wan Shahrizal, Hari & Co v PP [2023] 4 MLJ 1; [2023] 4 CLJ 843; [2023] 4 AMR 389, FC (refd)

Topaiwah v Salleh [1968] 1 MLJ 284; [1968] CLJU 161, FC (refd)

UEM Group Bhd (previously known as United Engineers (M) Bhd v Genisys Integrated Engineers Pte Ltd & Anor [2018] supp MLJ 363; [2010] 9 CLJ 785, FC (refd)

Vishnu a/l Telagan v Timbalan Menteri Dalam Negeri, Malaysia & Ors [2019] 6 MLJ 1; [2019] 9 CLJ 177; [2019] 5 AMR 554, FC (refd)

Woodland v Swimming Teachers Association and others [2014] AC 537, CA (folld)

Legislation referred to

Federal Roads (Private Management) Act 1984 s 5
Highway Authority Malaysia (Incorporation) Act 1980
Highways Act 1980 [UK] s 41(1)

Appeal from: *Projek Lebuhraya Usahasama Bhd & Anor v Zakaria bin Hamid (biological father to the deceased, Azizi bin Zakaria) & Anor* [2024] 7 MLJ 871 (High Court, Taiping)

Krishna a/l Dallumah (with Thirunaaukarasu a/l Thoppasamy and Yong Yoong Hui) (Thiru Jegatish & Assoc) in Civil Appeal No A-04(NCvC)(W)-444–10 of 2023 for the appellant.

Athithan a/l Singaravelu (with Illavarasi Thiruchelvam) (Athi & Seelan) in Civil Appeal No A-04(NCvC)(W)-447–10 of 2023 for the appellant.

Ayleswary a/p Bathamanathan (Sudesh Narinder & Partners) in Civil Appeal Nos A-04(NCvC)(W)-444–10 of 2023 and A-04(NCvC)(W)-447–10 of 2023 for the respondents.

Faizah Jamaludin JCA:

INTRODUCTION

[1] The present appeals before us — W-04(NCVC)(W)-444–10 of 2023 ('Appeal 444') and W-04(NCVC)(W)-447–10 of 2023 ('Appeal 447') — have been filed by Projek Lebuhraya Usahasama Bhd ('PLUS') and Projek Penyelenggaraan Lebuhraya Bhd ('PROPEL'), respectively. These appeals challenge the decision of the Taiping High Court, which affirmed the sessions

court's findings on liability relating to the fatal accident at KM 177.8 of the Lebuhraya Utara-Selatan ('the highway'), resulting in the death of motorcycle rider Azizi bin Zakaria ('the deceased'). They also contest the High Court's decision in allowing the respondents' cross-appeal with regards to quantum.

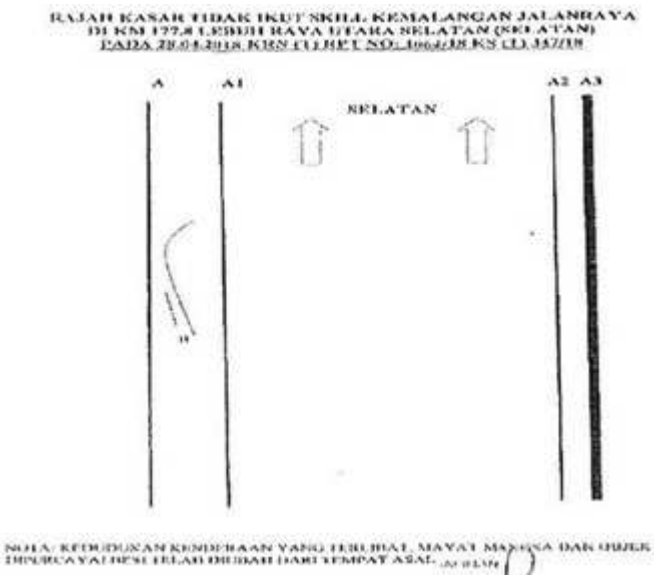
[2] PLUS holds the concession for the highway; PROPEL is its contractor for maintenance and repairs. The first and second respondents are the parents of the deceased. They had brought an action for negligence at the Taiping Sessions Court against PLUS, PROPEL and the Muhammed Azmer bin Jamel ('SD2') for the death of their son. The sessions court found both PLUS and PROPEL negligent and had allocated 80% of the liability to them and 20% to the deceased. It awarded the respondents the sum of RM57,600 for loss of dependency and the sum of RM3,000 as special damages.

[3] Upon appeal by PLUS and PROPEL, the High Court upheld the sessions court's decision regarding liability and allowed the respondents' cross-appeal, increasing the quantum of loss of dependency to RM500 per month.

[4] The appellants now appeal against the High Court's decision, contending that the learned judicial commissioner ('JC') was plainly wrong in upholding the sessions court's decision as regards liability and allowing the respondents' cross-appeal on quantum.

BACKGROUND FACTS

[5] On 27 April 2018, at about 11.45pm, the deceased was riding along the highway in a convoy with six other motorcyclists from Kuala Ketil, Kedah to Banting, Selangor. At KM117.8 of the Highway, the deceased hit a yellow-orange object along A1 (shown in the sketch plan below) and was flung off his motorcycle onto the middle of the highway at A1-A2; his motorcycle fell onto the side of the road along A1.



[6] Immediately after the deceased's collision with the yellow-orange object, SD2 who was riding in the convoy directly behind the deceased collided into the deceased's motorcycle that had fallen along A1. As a result of the collision, SD2 and his motorcycle fell and dragged the deceased's motorcycle onto lane A-A1, which is the emergency lane.

[7] SD2 was conscious after falling into lane A-A1 and switched on his hand-phone light to search for the deceased. SD2 saw the deceased lying in the middle of lane A1-A2, and with the help of the members of the public that had stopped to help, carried the deceased to lane A-A1. However, as result of the excessive injury to his head, the deceased succumbed to his injuries and died on location.

PRINCIPLES OF APPELLATE INTERVENTION

[8] The law on appellate intervention is trite. An appellate court must not interfere with the trial judge's conclusions on the primary facts unless it is satisfied that the trial judge was 'plainly wrong'. As explained by the Federal Court in *Ng Hoo Kui & Anor v Wendy Tan Lee Peng (administratrix for the estate of Tan Ewe Kwang, deceased) & Ors* [2020] 12 MLJ 67; [2020] 10 CLJ 1; [2020] 8 AMR 227 ('Ng Hoo Kui'):

> [34] The 'plainly wrong' test operates on the principle that the trial court has had the advantage of seeing and hearing the witnesses on their evidence as opposed to the appellate court that acts on the printed records.

[9] In Malaysia, the Federal Court has held that a 'plainly wrong decision' is a decision arrived at due to no or insufficient judicial appreciation of evidence and/or a material error of the law: see *Gan Yook Chin (P) & Anor v Lee Ing Chin @ Lee Teck Seng & Ors* [2005] 2 MLJ 1; [2004] 4 CLJ 309; [2004] 6 AMR 781 (FC); *UEM Group Bhd (previously known as United Engineers (M) Bhd v Genisys Integrated Engineers Pte Ltd & Anor* [2018] supp MLJ 363; [2010] 9 CLJ 785 (FC); *Tengku Dato' Ibrahim Petra bin Tengku Indra Petra v Petra Perdana Bhd and another appeal* [2018] 2 MLJ 177; [2018] 2 CLJ 641; [2018] 1 AMR 517 (FC); *Ng Hoo Kui*.

[10] The Federal Court in *Ng Hoo Kui* reiterated that the 'plainly wrong' test was not intended to be used by an appellate court as a means to substitute its own decision for that of the trial court on the facts. As long as the trial court's conclusion can be supported on a rational basis in view of the material evidence, the fact that the appellate court felt like it might have decided differently was irrelevant:

> [148] ... As long as the trial judge's conclusion can be supported on a rational basis in view of the material evidence, the fact that the appellate court feels like it might have decided differently is irrelevant. In other words, a finding of fact that would not be repugnant to common sense ought not to be disturbed. The trial judge should be accorded a margin of appreciation when his treatment of the evidence is examined by the appellate courts.

[11] The Federal Court found in *Ng Hoo Kui* that the Court of Appeal had erroneously applied the 'plainly wrong' test in a broad and general manner without identifying specifically why the trial judge's findings were plainly wrong on the key issues. It held that it was not sufficient for the Court of Appeal to reverse the findings of fact on a particular point of evidence merely because it disagreed with the trial judge's conclusion on whether one party or the other was to be believed on the evidence adduced. Although there might have been inconsistencies in the evidence — which meant that another judge might have reached a different conclusion — this was not relevant when considering if a trial judge's findings could be overturned. It held that unless the trial judge's conclusion was one that no reasonable judge would have made, his conclusion on the point should be left undisturbed.

[12] Thus, before this court can intervene in the decision of the High Court in these appeals, we have to determine:

(a) whether the High Court in exercising its appellate function had correctly applied the 'plainly wrong' test;

(b) whether the trial judge's conclusion was one that reasonable judge would have made; and

(c) did the sessions court and/or the High Court arrive at their respective

A decisions due to no or insufficient judicial appreciation of the evidence and/or a material error of law.

Liability

B **[13]** The main issue in both these appeals is whether PLUS and/or PROPEL are liable for the condition of the highway at the night of the accident. It is not disputed that the accident resulted from the deceased hitting a yellow-orange object on the highway, and the area was pitch black at the time of the accident: there were no street lights on the stretch of the highway where the accident C occurred. This was confirmed by SD2 and the investigating officer ('SP1') who had arrived at the site approximately one hour after the accident.

[14] In a nutshell, the appellants' case is that the learned JC had erred in law D and in fact in upholding the finding by the learned sessions court judge ('SCJ') that the respondents had discharged their burden of proving that deceased's death was caused by PLUS and PROPEL's negligence, and allocating 80% of the liability to the appellants.

E Statutory duty

[15] Learned counsel for PLUS submits that the Highway Authority Malaysia (Incorporation) Act 1980 (Act 231) ('the HA 1980') only imposes a duty on it to do all things reasonably necessary for the maintenance of the F Highway. He cites as authority the English case of *Gorringe v Calderdale Metropolitan Borough Council* [2004] UKHL 15; [2004] 2 All ER 326, where the House of Lords held that 'the duty to maintain the highway' under s 41(1) of the UK's Highways Act 1980, did not include a duty to take reasonable care to secure the highway was not dangerous to traffic.

G

[16] With respect to learned counsel, PLUS is the concession holder of the highway. It is not the Highway Authority Malaysia. The Highway Authority Malaysia is Lembaga Lebuhraya Malaysia ('LLM'). It follows; therefore, HA 1980 does not apply to PLUS. It applies to LLM. For this reason, we disagree H that HA 1980 applies to PLUS.

[17] As the concession holder of the Highway, PLUS is authorised to demand, collect and retain toll on the said highway. It has a statutory duty to maintain in good repair and condition the highway under the Federal Roads I (Private Management) Act 1984 (Act 306) ('the FRA 1984'). Section 5 of the FRA 1984 states:

> 5 Duty to maintain road, bridge or ferry
>
> Any person who is authorized to demand, collect and retain tolls under an order

made under section 2 shall maintain in good repair and condition and in accordance with sound engineering practices the road, bridge or ferry in respect of which the order is made.

[18] The law is settled that in construing and interpreting statutes, where the words of a statute are unambiguous, plain and clear, courts must give these words their natural and ordinary meaning and must apply the literal rule. It is only where the words in the statutes are ambiguous or where a literal reading of a provision bears more than one meaning, may courts use the purposive approach: see the Federal Court's decisions in *Tebin bin Mostapa (as administrator of the estate of Hj Mostapa bin Asan, deceased) v Hulba-Danyal bin Balia & Anor (as joint administrators of the estate of Balia bin Munir, deceased)* [2020] 4 MLJ 721; [2020] 7 CLJ 561; [2020] 5 AMR 579; *AJS v JMH and another appeal* [2022] 1 MLJ 778; [2022] 1 CLJ 331; [2022] 1 AMR 617.

[19] The words in s 5 of the FRA 1984 are clear and unambiguous: any person who is authorised to demand, collect and retain tolls for a road, bridge or ferry shall maintain in good repair and condition, the said road, bridge or ferry, in accordance with sound engineering practices.

[20] In this instant case, PLUS as the concession holder of the highway is authorised to demand, collect and retain tolls from users of the highway. Therefore, it has a statutory duty under s 5 of the FRA 1984 to maintain the highway in good repair and condition in accordance with sound engineering practices.

Duty of care

[21] Learned counsel for PLUS submits that the learned JC had erred in fact and in law when she agreed with the SCJ that PLUS owed a duty of care towards the deceased and that it had breached that duty of care, and is, thus, negligent. PLUS argues, that as a matter of public policy, it would not be just, fair and reasonable to impose liability on it as this would open up floodgates to would-be plaintiffs for any incident on the highway to make claims of negligence against PLUS, regardless of who was negligent.

[22] PLUS argues that liability should not be imposed on it, as the concessionaire of the highway, for objects that had fallen or were thrown off vehicles using the highway.

[23] The question before us is whether the sessions court and the High Court were plainly wrong on the issue that the appellants have a duty of care at common law towards the deceased, when the appellants themselves did not plead in their defence that they did not have any duty of care at common law

towards the deceased or the other users of the highway.

[24] What PLUS and PROPEL had pleaded in para 3(a) of their defence was that there was no foreign object in the deceased's lane. And in para 3(b), had pleaded in the alternative, that they had taken all reasonable steps to prevent any foreign object from being on the highway. Paragraph 3(b) of the appellants defence is produced below:

> 3(b) Selanjutnya dan sebagai alternatifnya sekiranya terdapat sebarang benda asing di tempat tersebut, Defendan Pertama dan Defendan Kedua telah mengambil kesemua tindakan yang wajar dan munasabah untuk mengelakkan sebarang benda asing berada di jalanraya pada setiap masa dan sekiranya wujud sebarang benda asing ianya adalah satu perkara yang di luar kawalan Defendan Pertama dan Defendan Kedua pada masa tersebut dan sekiranya Simati, Azizi bin Zakaria terlibat dalam kemalangan jalanraya pada masa dan tempat tersebut, ianya adalah disebabkan oleh kecuaian atau kecuaian sumbangan Plaintif-Plaintif.

[25] It is trite that parties are bound by its pleadings: see *Samuel Naik Siang Ting v Public Bank Bhd* [2015] 6 MLJ 1; [2015] 8 CLJ 944; [2018] 3 AMR 259, and *Iftikar Ahmed Khan (as the executor of the estate for Sardar Mohd Roshan Khan, deceased) v Perwira Affin Bank Bhd (previously known as Perwira Habib Bank Malaysia Bhd)* [2018] 2 MLJ 292; [2018] 1 CLJ 415; [2017] 8 AMR 517. Parties cannot raise defences and/or issues that were not pleaded in their defence in this appeal. Therefore, PLUS and PROPEL cannot now deny that they have a duty of care towards the deceased as a user of the highway.

[26] Similarly, in their appeal to the High Court, as reflected in the appellants' submissions, the appellants' did not contend that they did not have a duty of care to the deceased. Rather, their position was that they had exercised reasonable care in fulfilling their obligations to ensure the safety of road users. Paragraphs 5.5 and 5.13 of the PLUS's submission at the High Court is produced below:

> 5.5 Kesemua Langkah ini menunjukkan Defendan telah mengambil 'reasonable care' dalam memenuhi tanggungjawabnya untuk menjaga keselamatan pengguna jalan raya.
>
> 5.13 Berasaskan penghujahan di atas adalah dihujahkan bahawa Defendan telah mengambil kesemua langkah yang munasabah untuk mengawasi untuk mengesan dan mengalih halangan di jalanraya untuk memudahkan perjalanan pengguna jalanraya dan Defendan tidak cuai dalam apa jua cara.

[27] The learned JC did not address the question of whether PLUS or PROPEL owed a duty of care to the deceased. We find that this was not erroneous of her, as the appellants had not pleaded that they lacked such a duty toward the deceased. In para 22 of her grounds of judgment, she considered the

English case of *Burnside & another v Emerson & another* [1968] 1 WLR 1490 and referenced the legal principle articulated in *Gorringe v Calderdale Metropolitan Borough Council*, which holds that the existence of a statutory duty does not automatically give rise to a corresponding common law duty of care on the part of the relevant authority to the individuals or classes of persons for whom the statute is intended.

[28] *Burnside v Emerson* is an UK Court of Appeal decision in an action for non-feasance against a highway authority. Lord Denning MR said the following as regards a highway authority's duty to maintain the highway:

> *There is a duty on a highway authority to maintain the highway; and 'maintain' includes repair. If it is out of repair, they fail in their duty: and if damage results, they may now be made liable unless they prove that they used all reasonable care.* The action involves three things:
>
> > *First: The plaintiff must show that the road was in such a condition as to be dangerous for traffic*. In seeing whether it was dangerous, foreseeability is an essential element. The state of affairs must be such that injury may reasonably be anticipated to persons using the highway. ...
> >
> > *Second: The plaintiff must prove that the dangerous condition was due to a failure to maintain, which includes a failure to repair the highway*. In this regard, a distinction is to be drawn between a permanent danger due to want of repair, and a transient danger due to the elements. When there are potholes or ruts in a classified road which have continued for a long time unrepaired, it may be inferred that there has been a failure to maintain. When there is a transient danger due to the elements, be it snow or ice or heavy rain, the existence of danger for a short time is no evidence of a failure to maintain. ...
> >
> > *Third: If there is a failure to maintain, the highway authority is liable prima facie for any damage resulting therefrom. It can only escape liability if it proves that it took such care as in all the circumstances was reasonable.* ... (Emphasis added.)

[29] Learned counsel for PLUS argues that as a matter of public policy it would not be just, fair and reasonable to impose liability on it for it for the deceased's death. He cites as authority the cases of *Arab-Malaysian Finance Bhd v Steven Phoa Cheng Loon & Ors and other appeals* [2003] 1 MLJ 567; [2003] 1 CLJ 585 ('Steven Phoa'); *Tenaga Nasional Malaysia v Batu Kemas Industri Sdn Bhd and another appeal* [2018] 5 MLJ 561; [2018] 6 CLJ 683; [2018] 4 AMR 234 ('Batu Kemas'). He also referred to the High Court's decision in *Project Lebuhraya Utara-Selatan Bhd v HMD Rais A Mohamed Ariff* 2010 [MLJU] 2242; [2011] 10 CLJ 679, on whether the appellant had taken all reasonable steps to prevent wild boars or other animals from straying onto the highway.

[30] With respect to learned counsel for PLUS, the question before the Federal Court in *Steven Phoa* and *Batu Kemas* was whether to impose liability

on the local authority and TNB, respectively, for the economic loss suffered by the respondents in those cases. The Federal Court in *Batu Kemas* adopted the 'three-fold test' in *Caparo Industries Plc v Dickman and others appellants* [1990] 2 AC 605; [1990] UKHL 2, where the House of Lords held that for a duty of care to arise in negligence, three elements must be present. They are: (a) the harm must be reasonably foreseeable; (b) there must be proximity of relationship between the parties; and (c) it must be just, fair and reasonable to impose liability.

[31] Whereas, the issue before us in these appeals is not liability for economic loss caused by the appellants' negligence but for the death caused to the deceased. Injury and death is one of the established categories of liability. The Federal Court in *Batu Kemas* held that where a case falls within one of the established categories of liability, the third element of the *Caparo v Dickman* test does not arise. Jeffery Tan FCJ delivering the decision of the Federal Court said:

> [66] In Malaysia, the 'fair, just and reasonable' element is well established in cases concerned with economic loss and public services. *Still it should be said that where a case fell within the established categories of liability, 'a defendant should not be allowed to seek to escape from liability by appealing to some vague concept of justice and fairness' as the previous authorities 'have by necessarily implication held that it is fair, just and reasonable that the claimant should recover'* (Clerk & Lindsell at para 8–24 citing Hobhouse LJ in *Perrett v Collins* [1999] PNLR 77). Where a case falls within one of the established categories of liability, the *Caparo* three-fold test, which is to determine the duty of care in a new and novel situation, is inapplicable. *Where a case falls within one of the established categories of liability, the third element in Caparo does not arise, as the previous authorities 'have by necessarily implication held that it is fair, just and reasonable that the claimant should recover'.* (Emphasis added.)

[32] Accordingly, the third element of the *Caparo v Dickman* test does not arise in determining whether PLUS has a duty of care at common law towards the deceased. All the previous authorities — starting from *M'Alister (or Donoghue) (Pauper) v Stevenson* [1932] AC 562 — have held by necessary implication that it is fair, just and reasonable that the claimant should recover if it can show that the harm to the claimant is reasonably foreseeable and there is a relationship of proximity between the tortfeasor and the claimant.

[33] Based on the facts and circumstances of this case, we find that PLUS does owe the deceased a duty of care at common law to maintain the highway in good repair and condition. This is because: (a) the harm to users of the highway caused by PLUS' or its contractors' failure to maintain the highway in good repair and condition is reasonably foreseeable; and (b) there is proximity of relationship between the highway users and PLUS.

[34] What does 'maintain in good repair and condition' mean? Based on *Burnside v Emerson*, first, the highway must be in such a condition as to be dangerous for traffic; secondly; the dangerous condition was due to a failure to maintain, which includes a failure to keep it in good repair and condition; and thirdly, if there is a failure to maintain, PLUS is liable prima facie for any damage resulting therefrom. In order to escape liability, PLUS must prove that it took such care as in all the circumstances was reasonable.

Did PLUS take reasonable care?

[35] Thus, the next question is whether PLUS took reasonable care in the circumstances.

[36] PLUS contends that it had taken reasonable care to ensure the safety of all the highway users by erecting fences to prevent any entry of objects, and having PLUSRonda patrol the area at intervals of 45–50 minutes. It cites the case of *Hamzah D494 & Ors v Wan Hanafi bin Wan Ali* [1975] 1 MLJ 203; [1975] CLJU 54 (FC), where the Federal Court adopted the principle in *Latimer v AEC Ltd* [1953] 2 All ER 449, that measures that should be taken are what a reasonably prudent man would have taken in the circumstances.

[37] Both SP1 and SD2 testified that the stretch of the highway on which the accident occurred was pitch black (*gelap gelita*). One of the dangers to users on the highway are foreign objects on the road, that may have been left by road users or others, or dropped from vehicles using the highway. In this instant case, it was a yellow-orange object — identified as a wheel chock for trucks and trailers. In *Ahmad Rashidi bin Yahya & Anor v Projek Lebuhraya Usahasama Bhd* [2021] MLJU 1632; [2021] CLJU 1409; [2021] AMEJ 1356, the foreign object was a grey iron block. The High Court in *Ahmad Rashidi* allocated 40% of the liability to PLUS and 60% to the plaintiff.

[38] The Court of Appeal affirmed the High Court's decision in *Ahmad Rashidi*. However, it is not evident in *Ahmad Rashidi* when the accident took place — whether it was light or dark — since the time of accident was not stated in the High Court's judgment and the Court of Appeal did not issue any grounds of judgment. Therefore, we find no merit in the PLUS's argument that the learned JC should have distinguished *Ahmad Rashidi* by the colour of the object on the highway.

[39] Learned counsel for PLUS submitted that the learned JC fell into error by relying on the High Court's decisions in *LBS Travel Sdn Bhd dan satu lagi lwn Nathan a/l Muthayah dan lain-lain* [2019] 8 MLJ 767; [2019] 2 CLJ 113; [2018] MLRHU 1006 and *Parimala a/p Muthusamy & Ors v Projek Lebuhraya Utara-Selatan* [1997] 5 MLJ 488; [1997] 4 CLJ 54; [1997] 4 AMR

3274, when both these decisions were reversed by the Court of Appeal. With respect to learned counsel for PLUS, a careful reading of the learned JC's grounds of judgment shows that she did take into account that the High Court's decisions in *LBS Travel* and *Parimala* had been reversed by the Court of Appeal. As regards *LBS Travel*, Her Ladyship stated at para 25 of the GOJ in item 5 of the table 'COA reversed the HC order on 3 October 2019'. And in para 27 she said, 'Although it has been reversed by the Court of Appeal, as far as I am aware, there is no written grounds'. As for *Parimala*, the learned JC only listed it as one of the cases that involved PLUS and she did not analyse the decision of the High Court in that case.

[40] Moreover, there are no written grounds of judgment in both *LBS Travel* and *Parimala*. It is settled law that without written grounds of judgment, the decision of a higher court is not binding under the principle of stare decisis on a lower court: see *Tetuan Wan Shahrizal, Hari & Co v Public Prosecutor* [2023] 4 MLJ 1; [2023] 4 CLJ 843; [2023] 4 AMR 389; *Vishnu a/l Telagan v Timbalan Menteri Dalam Negeri, Malaysia & Ors* [2019] 6 MLJ 1; [2019] 9 CLJ 177; [2019] 5 AMR 554 (FC); and *Malaysian Motor Insurance Pool v Tirumeniyar a/l Singara Veloo* [2020] 1 MLJ 440; [2019] 10 CLJ 731; [2019] 7 AMR 385 (FC).

[41] For these reasons, we find that the learned JC did not fall into error by citing decisions of the High Court in both *LBS Travel* and *Parimala* in her grounds of judgment.

[42] Is providing patrols at 45–50 minutes intervals by PLUSRonda reasonable in the circumstances — is it a measure that a reasonably prudent man would have taken in the circumstances? Both the sessions court and the High Court held that the steps taken by the appellants were not reasonably sufficient in the circumstances, and allocated 80% of the liability on both PLUS and PROPEL.

[43] We do not agree with the arguments presented by PLUS and PROPEL that the establishment of PLUSRonda to patrol the 800km stretch of the highway constitutes the taking of *all* reasonable measures to ensure user safety.

[44] In our view, establishing PLUSRonda is only one of the steps to ensure the highway is maintained in good order and condition to ensure that it is safe for road users. PLUSRonda patrols the highway in big vehicles. In an unlit stretch of the highway, with no street lights, the PLUSRonda personnel will only be able to see what is on the road in front of their vehicle. In this case, SD-1 testified that he did not see the yellow-orange object when he patrolled the road approximately 20 minutes before the accident. In fact, SD-1 said that even when he came back to the site after the accident, he was not able to see the

yellow-orange object on the road. When asked by the learned SCJ why he wrote the accident was caused by hitting an object on the road, SD-1 said it was based on what he was told by the motorcyclists at the accident site.

[45] Nevertheless, we also disagree with the High Court in *Projek Lebuhraya Usahasama Bhd v Abdul Azim John bin Abdullah* [2022] MLJU 1181; [2022] CLJU 1168; [2022] AMEJ 0588 that PLUS must *immediately* remove any foreign object or obstruction on the highway to satisfy their duty of care or statutory obligations. We find that imposing such an immediate requirement is not reasonable under the circumstances.

[46] We do, however, agree with the submission by learned counsel for PROPEL that there ought to be a reasonable time for PLUS and/or PROPEL to discover or be informed of objects on the highway and for it to arrive at the scene and remove the object.

[47] The reasonable response time may range from ten minutes to 30–45 minutes, depending on whether the object is detected directly by a PLUSRonda patrol vehicle or reported by road users, as well as the distance between the object and the nearest PLUSRonda base. PLUS and/or PROPEL should, in consultation with relevant experts, develop a standard operating procedure (SOP) that clearly outlines both the process and timeline for removing foreign objects from the highway.

[48] It is observed that in several instances, including this case and *Abdul Azim John*, accidents occurred due to motorists being unable to see obstructions on the highway at night when the area was unlit. On unlit roads at night, typically only the dividing lines painted with reflective paint or the road reflectors, commonly referred to as 'cats-eye', are visible.

[49] Therefore, it is our considered opinion that a reasonable course of action in the circumstances would be for PLUS to install street lighting at intervals of, for instance, 300 meters or another distance deemed appropriate, in accordance with established engineering practices. Furthermore, with the introduction of solar-powered street lights, operational expenses are expected to be significantly reduced compared to those associated with conventionally powered lighting systems.

[50] For these reasons, we find that in the circumstances that PLUS did not take reasonable steps to maintain and keep the highway in good repair and condition.

A Is PLUS's duty to maintain and repair the highway delegable?

[51] Learned counsel for PLUS argues that its duty to maintain and repair the highway is delegable based on the decision of the Federal Court in *Hemraj & Co Sdn Bhd v Tenaga Nasional Bhd* [2023] 1 MLJ 785; [2023] 1 CLJ
B 651; [2023] 1 AMR 725 ('Hemraj v TNB'). PLUS contends that because it had appointed PROPEL as its independent contractor to maintain and repair the highway, PLUS is not liable for the damage caused to users of the highway as a result of its negligence.

C **[52]** What is a non-delegable duty of care? Lord Sumption in *Woodland v Swimming Teachers Association and others* [2014] AC 537 ('Woodland'), explained that the expression 'non-delegable duty' has become the conventional way of describing those cases in which the ordinary principle is
D displaced; the duty extends beyond being careful, to procuring the careful performance of work delegated to others.

[53] The Federal Court in *Hemraj v TNB* held that renovation works carried out by a homeowner through its independent contractor was delegable because
E it was not hazardous. However, it held, citing with approval Lord Sumption's judgment in *Woodland*, that operations relating to hazards in a public place such as a highway are non-delegable. Zabariah Yusoff FCJ said:

> [56] There are further examples of non-delegable duties of care, namely, dangerous operations on the highway ...

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[54] Lord Sumption in *Woodland* held that 'highway and hazards' cases are examples of non-delegable duties of care. The Federal Court in *Hemraj v TNB* explained that in order for a duty of care relating to work on a highway to be non-delegable, the work must be hazardous.

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[55] Apart from the 'highway and hazards' cases, Lord Sumption had set out characteristics of five elements that would give rise to non-delegable duties of care. They are:

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> 23 ... If the highway and hazard cases are put to one side, the remaining cases are characterised by the following defining features:
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> (1) The claimant is a patient or a child, or for some other reason is especially vulnerable or dependent on the protection of the defendant against the risk of injury. Other examples are likely to be prisoners and residents in
I care homes.
>
> (2) There is an antecedent relationship between the claimant and the defendant, independent of the negligent act or omission itself, (i) which places the claimant in the actual custody, charge or care of the defendant, and (ii) from which it is possible to impute to the defendant the

assumption of a positive duty to protect the claimant from harm, and not just a duty to refrain from conduct which will foreseeably damage the claimant. It is characteristic of such relationships that they involve an element of control over the claimant, which varies in intensity from one situation to another, but is clearly very substantial in the case of schoolchildren.

(3) The claimant has no control over how the defendant chooses to perform those obligations, ie whether personally or through employees or through third parties.

(4) The defendant has delegated to a third party some function which is an integral part of the positive duty which he has assumed towards the claimant; and the third party is exercising, for the purpose of the function thus delegated to him, the defendant's custody or care of the claimant and the element of control that goes with it.

(5) The third party has been negligent not in some collateral respect but in the performance of the very function assumed by the defendant and delegated by the defendant to him.

[56] The Federal Court in *Dr Kok Choong Seng & Anor v Soo Cheng Lin and another appeal* [2018] 1 MLJ 685; [2017] 10 CLJ 529; [2017] 6 AMR 609 ('Dr Kok Choong Seng') held that the principle of non-delegable duty applies in Malaysia. Raus Sharif CJ in *Dr Kok Choong Seng* highlighted that Lord Sumption in *Woodland* had stressed that non-delegable duties of care should be imputed 'only so far as it would be fair, just and reasonable'.

[57] Work relating to the maintenance and repair of a highway, including on this highway, which is the main highway connecting the north and south of Malaysia and Singapore, is hazardous due to the amount vehicles that go up and down the highway on a daily basis. On this point alone based on *Woodland* and *Hemraj v TNB*, since maintenance of a highway falls within the 'highway and hazards' cases, PLUS's duty of care to maintain in good repair and condition the highway in non-delegable.

[58] Moreover, we find that the elements outlined in Lord Sumption's list applies to PLUS's duty to maintain the highway. This is due to several factors: first, users of the highway have no control over how PLUS chooses to perform its obligation to maintain the highway, whether through its employees or third parties. Second, PLUS delegated its duty to maintain highway to PROPEL, granting PROPEL both the responsibility for maintenance and the associated duty of care towards highway users, including the relevant element of control that goes with it. Third, PROPEL has been negligent not in some collateral respect but in the performance of the very function assumed by PLUS and delegated to PROPEL.

[59] Accordingly, for these reasons, we find that PLUS's duty to care at common law to the users of the highway to maintain the highway in good repair and condition is non-delegable. Therefore, although PLUS had delegated its duty to maintain and repair the highway to PROPEL, it remains liable for PROPEL's negligence that results in damage or injury to the users of the highway.

[60] As discussed above, this duty may be discharged by taking reasonable steps, which in our view includes removing foreign objects/obstructions from the highway within a reasonable time period and placing street lights at reasonable intervals on the highway in order to minimise the danger at night caused by these objects/obstructions for users of the highway.

[61] Therefore, we find that PLUS and PROPEL have not taken reasonable steps to discharge their duty of care to the deceased.

[62] Accordingly, based on the facts and the circumstances of the case, and the applicable law, we do not find that the sessions court was plainly wrong in its decision as regards its finding of liability and its allocation of liability to the appellants and the deceased.

[63] Further, we find that the High Court was not plainly wrong in upholding the sessions court's decision. As is evident from her grounds of judgment, the learned JC had considered the evidence adduced during the trial as well as the SCJ's grounds of judgment and the submissions of the parties before concluding that she did not see it fit to interfere with the factual findings of the learned SCJ since she was not 'plainly wrong' in arriving at her findings of facts. The learned JC noted in para 21 of her grounds of judgment that the trial judge had given a reasoned judgment and applied the relevant laws in arriving at her decision.

[64] Therefore, we find that there is no basis for appellate intervention in the High Court's determination on liability.

Quantum

[65] It is a settled principle of law that in an appeal on quantum of damages, an appellate court will only intervene in matters of quantum where there is a misapprehension of the facts or an error in the assessment by the judge who awarded the costs. An appeal court should not interfere in the award of damages just because it thinks that if it had heard the case, it would have awarded a higher or lesser sum.

[66] The Federal Court in *Tan Kuan Yau v Suhindrimani* [1985] 2 MLJ

22; [1985] CLJ Rep 323 (FC) held that an appeal court should be disinclined to interfere with the trial judges award of damages. An appeal court ought to intervene in the quantum of damages awarded only if: (a) the judge failed to take into account some relevant consideration or took into account some irrelevant consideration; or (b) the amount is so excessive or so insufficient as to be plainly unreasonable. Abdul Hamid Omar CJ (Malaya) (as he then was) said:

> Now, in an appeal on quantum of damages, it is essential in order to come to a conclusion to bear in mind certain principles which are well established. The appeal court is slow, indeed, disinclined to interfere with the judge's finding merely because the appeal court thinks that if the case had been before it in the first instance a lesser sum would have been awarded.
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> ...
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> The principle on which the Court of Appeal reviews the assessment of damages, whether too high or too low, is not because the Court of Appeal might have given rather more or rather less, but only: (1) if the judge has omitted some relevant consideration or admitted some irrelevant consideration; or (2) if the amount is so excessive, or insufficient, as to be plainly unreasonable.

[67] This is in line with the Federal Court's earlier decision in *Topaiwah v Salleh* [1968] 1 MLJ 284; [1968] CLJU 161, where Azmi CJ (Malaya) (as he then was) delivering the judgment of the Federal Court said:

> In order to justify reversing the trial judge on the question of the amount of damages it will generally be necessary that this court should be convinced either that the judge acted on some wrong principle of law, or that the amount awarded was so extremely high or so very small as to make it an entirely erroneous estimate of the damages to which the plaintiff is entitled (see *Flint v Lovell* [1935] 1 KB 354).

[68] In both these appeals before us, PLUS and PROPEL contend that the learned JC was wrong at law to have upheld the award for loss of dependency and increased its amount to RM500 per month, when the evidence shows that the contribution from the deceased was for his younger siblings.

[69] From our perusal of the evidence presented during the trial, the appellants failed to prove their claim that the deceased's monthly contribution to his parents was for his siblings. His father — the first respondent ('SP3') testified that the deceased had contributed RM300 per month when he first started working and later his contribution was increased to RM700. SP3 testified during the trial that the RM700 contributed from the deceased went towards food and drink, and utilities.

[70] The appellants did not adduce any evidence to counter SP3's testimony

A or to prove their case that the RM700 contribution from the deceased was for his siblings.

[71] The reason the learned JC allowed the respondents' cross-appeal on the quantum of the loss of dependence was because of the discrepancy between the
B pronouncement made by the SCJ in open court on 24 May 2022 that the quantum of damages for loss of dependency was RM500 per month and that in the draft judgment and the SCJ's grounds of judgment, where it was stated that the quantum for loss of dependency of RM300. The increase was not because Her Ladyship thought that the amount awarded by the sessions court
C was too low.

[72] Accordingly, we see no reason to interfere with the learned JC's decision as regards the quantum of damages for respondents' loss of dependency.

D DECISION

[73] For the above reasons, Appeal 444 and Appeal 447 are dismissed with costs. The order of the High Court dated 11 May 2023 is affirmed.

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[74] 'Tarikh Penghakiman' in the sessions court's order dated 24 May 2022 means the date of the judgment of the sessions court.

[75] Costs of RM40,000 in total for both appeals, subject to allocatur.

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Appeals dismissed; and High Court's decision affirmed.

Reported by Ashok Kumar

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